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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

In re ALICIA M., a Person Coming Under the  
Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ALBERTO M.,

Defendant and Appellant.

B256617

(Los Angeles County  
Super. Ct. No. CK72783)

APPEAL from orders of the Superior Court of Los Angeles County,  
Robert S. Draper, Judge. Affirmed.

Jack A. Love, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel  
and Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

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Alberto M. (father) appeals the juvenile court's jurisdictional and dispositional findings and orders sustaining a Welfare and Institutions Code section 342<sup>1</sup> petition and ordering father's infant daughter, Alicia M., removed from his care. We find that substantial evidence supported the juvenile court's findings and orders in all respects, and thus we affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **I.**

#### **Detention**

Alicia M., born November 2013, is the child of father and Amanda H. (mother). The child came to the attention of the Department of Children and Family Services (DCFS) one day after Alicia's premature birth at 23 weeks gestation. At birth, mother tested positive for opiates, amphetamines, and cocaine, and Alicia tested positive for cocaine and opiates. Alicia weighed one pound, 10 ounces, and was immediately placed in the Neonatal Intensive Care Unit (NICU).

Father told the children's social worker (CSW) he had met mother about five months earlier and believed he was Alicia's father. He did not currently have a permanent residence, but said he planned to move into an apartment in several weeks. He said he would obtain baby furniture and supplies as soon as he learned when Alicia would be released from the hospital. He said his friend "Cristina" would help him care for Alicia, but he could not provide contact information for her.

Mother has two other children who have been subject to DCFS supervision. Both children had positive toxicology screens at birth and were immediately detained. Denzel A. (born April 2008) was placed with his father; Kylie H. (born June 2012) was placed with a prospective adoptive parent.

Father also has two other children who have been subject to DCFS supervision. In November 2008, the juvenile court sustained an allegation that the family home was in a filthy and unsanitary condition, placing the children at risk of harm. The court terminated

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<sup>1</sup> All subsequent statutory references are to the Welfare and Institutions Code.

jurisdiction in 2009, and father reported the children were living with their mother in Texas.

On December 4, 2013, the juvenile court found a prima facie case for detaining Alicia pursuant to section 300, subdivision (b). Father was granted monitored visitation at the hospital.

## **II.**

### **Section 300 Petition**

DCFS filed a juvenile dependency petition on December 4, 2013. As subsequently amended, it alleged: (b-1) Alicia had a positive toxicology screen immediately after her birth; and (b-2) mother has a history of substance abuse and is a current user of methamphetamines, cocaine, and opiates, which render her incapable of caring for Alicia.

## **III.**

### **March 2014 Jurisdiction/Disposition Proceeding**

The jurisdiction/disposition report, dated March 4, 2014, stated Alicia had remained hospitalized for approximately two months following her birth. She was released home to a foster family in early January 2014. Records of her first out-patient exam in mid February 2014 said Alicia was still very small and should be offered formula every two hours. She continued to exhibit jitteriness in both arms.

Father said he was 68 years old and had a verbal contract with an unnamed individual to live in a vacant home without paying rent until the home was sold. The house was empty other than father's bed, television, a side table, and a chair. Father had no baby clothes, diapers, or baby furniture. He said he would obtain stable housing if Alicia were released to his care, and would obtain child care through "Margot."

DCFS recommended that it was not in Alicia's best interests to be placed with father. DCFS reported: "Father appears to be in need of services to address his overall parenting skills and knowledge of the effects of substance abuse given that father has received court ordered services in the past for similar case issues. Furthermore, it remains of concern that father does not appear to understand the impact that mother's

drug use had on the child Alicia's physical health. Father maintains that it was not his duty to attempt to obtain assistance for mother who admitted to engaging in drug use. Father further admits that he did not ensure that mother obtain any type of medical care after he found out that mother was pregnant with the child Alicia. Furthermore, at this time, father's housing situation does not appear to be stable nor does father appear equipped to care for the child Alicia based on the observations made at father's current residence. Despite the aforementioned, father appears willing and able to comply with court orders and has expressed a willingness to address the case issues, therefore, at this time DCFS finds it in the best interest of the child Alicia that the father receive Family Reunification Services in an effort to successfully reunify the father with the child Alicia."

At the March 4, 2014 hearing, father testified that he had been living in his current home for eight months pursuant to a verbal agreement with "Luis Garcia" and "Fernando." He did not know who owed the home. He said he had clothes for Alicia but needed to get a crib. He said he had several people who wished to take care of Alicia, including "Juanita," "Margo," and "Ana." He said each had been a friend for many years.

After hearing argument, the court struck from the complaint an allegation that father failed to protect Alicia from mother's drug abuse, and sustained the remaining allegations as amended. The court declared Alicia a dependent of the court under section 300, subdivision (b), and found that returning Alicia to mother would pose a substantial danger to her health and safety. However, over DCFS's objection, the court ordered Alicia placed with father. The court stayed its order for one day to give father time to get a crib, and it ordered DCFS to provide father with family maintenance services. The court also ordered father to complete a parenting class, make Alicia available for unannounced home visits, and keep DCFS advised of his current address and telephone numbers.

#### **IV.**

##### **Section 342 Petition (New Facts or Circumstances)**

On April 17, 2014, DCFS detained Alicia from father and placed her in foster care, and on April 21, 2014, it filed a section 342 petition.<sup>2</sup> As subsequently amended, the petition alleged:

(b-1) Father failed to make an appropriate plan for Alicia, in that he “left the four month old child, who is at risk of suffering from a life-threatening illness, in the care of unrelated caregivers, Wendy [G.] and [R.V.], who had no medical training required to provide care of the child. The father left the child in the care of the unrelated caregiver [R.V.] for days at a time. Such failure to make an appropriate plan for the child’s care and supervision on the part of the father endangers the child’s physical health and safety and places the child at risk of physical harm and damage.”

(b-2) Alicia suffers from a life-threatening illness, requiring medical attention, yet father failed to take the child to the LAC-USC Medical Center for her well-child exam and synagis vaccine.<sup>3</sup>

(b-3) Father endangered Alicia by failing to make her available to DCFS for unannounced home visits and failed to provide DCFS with his addresses, in violation of court orders.

The detention report, filed April 21, 2014, stated that on March 7, 2014, the CSW attempted to make an unannounced visit at the family home, but found no one at home. The CSW called father, who said he said he was at work and would not allow anyone to

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<sup>2</sup> Section 342 provides: “In any case in which a minor has been found to be a person described by Section 300 and the petitioner alleges new facts or circumstances, other than those under which the original petition was sustained, sufficient to state that the minor is a person described in Section 300, the petitioner shall file a subsequent petition. This section does not apply if the jurisdiction of the juvenile court has been terminated prior to the new allegations. [¶] All procedures and hearings required for an original petition are applicable to a subsequent petition filed under this section.”

<sup>3</sup> Synagis is a medication that is used to prevent lung disease in premature or medically fragile babies.

meet with Alicia unless he was present. Father said he would bring Alicia to the DCFS office. When asked to provide contact information for Alicia's caregiver, father said the caregiver was a friend who he considered "like his niece," and he "would contact his friend to obtain the information and would provide it to [the] CSW in about 5 minutes." The CSW called father back, but he reported that the caregiver did not answer her phone. The CSW requested that father call back with the caregiver's contact information and said the caregiver would have to live-scan and receive medical training. Father did not call back with the caregiver's contact information.

On March 14, 2014, the CSW received caregiver Wendy G.'s contact information and spoke with her by phone. Wendy G. said she was taking care of Alicia a few hours per day, two to three days per week. A search of DCFS records revealed that Wendy G. had an open case alleging sexual abuse. The CSW told father that Wendy G. was not an appropriate caregiver, and father said he would find someone else.

On March 14, 2014, the CSW received a phone call from Francisco P., who identified himself as Alicia's babysitter's husband. Francisco reported that "they are concern[ed] with the safety of the baby (Alicia) as father does not provide the basic necessities and gets upset when they have asked him to bring diapers or wipes. Father has left the baby (Alicia) with them for long hours and gets mad when they contact him to come back to care for the baby. Per Mr. [P], it appears that father is not capable of caring for a newborn baby. They are helping him but it does not appear that he has a concrete plan, lacks child care, and is unable to meet the basic necessities of the child. Per Mr. [P.], the father appears clueless on how to care for a newborn and how to change the baby's diaper. Father has not paid them for their babysitting services and they are not sure if they will continue to be able to care for baby Alicia. Mr. [P.] is very concerned that father is not able to care for the baby. Mr. [P.] agreed to help father with babysitting services because they observed father struggling to feed the baby as he appears to lack basic knowledge in the care of a newborn. However, as of today they will no longer be helping with the care of baby Alicia."

On March 25, 2014, the CSW attempted to meet with father and Alicia at their home. The CSW found the home was open with “Open House” signs up. A real estate agent said that father had burned the carpet in one of the rooms and was no longer living there. Father had not provided DCFS with a new address.

Also on March 25, 2014, the CSW went to the home of Alicia’s new babysitter, R.V. Neither R.V. nor Alicia was there, but the CSW spoke to R.V.’s parents, Ruben and Elisa V. Mrs. V. said father appeared unable to care for a newborn, as he did not know how to hold or feed her, and he had not provided them with a crib. The baby was sleeping with R.V. in her bed. The CSW attempted to speak to father on the telephone, but he did not answer.

The CSW learned of father’s new address from the family preservation worker, and made an unannounced visit on March 30. The home was newly renovated and clean, but not furnished. Father was home alone and said Alicia was staying with R.V. The CSW told father that R.V. needed to live-scan and receive medical training from Alicia’s pediatrician.

On April 1, 2014, at a Multidisciplinary Case Planning Committee (MCPC) meeting, father was advised of the family preservation services available to him, which included child care, parenting education, and possibly rent assistance. Father said he did not need assistance and would not accept family preservation services because it would mean losing ten days of work. He said he would consult with his attorney and then contact a family preservation worker.

The CSW spoke to R.V. on April 3, 2014. R.V. reported that father had visited Alicia once that week for about two hours because he was busy with work. She said he was providing basic items for the baby but had not paid her for child care services. The same day, the CSW learned that father had not attended parenting classes since February 18 and had told the therapist he would not be returning.

On April 14, 2014, father failed to bring Alicia to her medical appointment, where she was to receive a well-child exam and synagis shot. DCFS evaluated Alicia to be at high risk for abuse or neglect because she had been left for long periods of time with

babysitters who did not have a crib, had not received any medical training, and had not live-scanned. The CSW had been able to see Alicia only once at the DCFS office, despite four different attempts to make unannounced visits. Father was unwilling to accept family preservation services, did not understand Alicia's medical needs, had missed her most recent medical appointment, and was not allowing DCFS to make unannounced visits. Father said Alicia was perfectly healthy, he had provided adequate medical training to the babysitters, and he had made an appropriate plan for his daughter's care by leaving her with babysitters for long periods of time. He said he was going to sue DCFS for defamation of his daughter's character by saying she was ill when she was not. For all of these reasons, DCFS recommended that Alicia be removed from father's care.

The court authorized Alicia's removal on April 15, 2014, and she was removed April 17. At an April 21, 2014 hearing, the juvenile court found a prima facie case existed for detaining Alicia pursuant to section 300, subdivision (b), substantial danger existed to her physical or emotional health, reasonable efforts had been made to eliminate the need for her removal from father, and continuance in father's home was contrary to her welfare. She was ordered detained in foster care until the next hearing.

## **V.**

### **May 2014 Jurisdiction/Disposition Proceeding**

The jurisdiction/disposition report, dated May 22, 2014, said that when Alicia was detained, she was coughing and congested. The CSW took her to the emergency room, where she was cleared for a foster care placement. The foster mother returned Alicia to the doctor on April 22; Alicia had a cough and was given an antibiotic, a nebulizer, and diagnosed with a heart murmur. Subsequently, on April 30, she was diagnosed with pertussis (whooping cough). Father was advised of the diagnosis and asked to provide contact information for the people with whom Alicia had contact, but he failed to do so.

The court held a contested hearing on May 22, 2014. The CSW testified that Alicia's case had been assigned to the medical case management unit because Alicia had



been prenatally exposed to hepatitis C through her mother and was medically fragile.<sup>4</sup> The CSW had told father of Alicia's diagnosis; she also told him that every caregiver would need medical training from the child's pediatrician and would need to live-scan. The CSW learned on April 14 that father had missed Alicia's well-child exam at which she was to receive a synagis shot. Father later told the CSW that there had been some confusion with the time and he was trying to reschedule the appointment.

R.V. testified that she had cared for Alicia for about a month. She met father immediately before she began taking care of Alicia, and said she had no concerns about father's ability to take care of Alicia.

Father testified that he was never told Alicia had hepatitis. After Alicia was born, someone showed him how to give Alicia drops of iron and polycitin. He said he gave the CSW his new address when he moved and that he never left Alicia with a babysitter for more than one night at a time. He said he wanted family preservation services, but he was tired of the CSW saying Alicia had hepatitis and was contagious.

After hearing argument, the court found as follows: "The thing that troubles the court is I think what the evidence as a whole shows is that father was not willing to cooperate with the Department and was actually more or less insisting that he would be the one diagnosing what issues the child had and what care was appropriate. I do think that that places the child at risk, and so I am going to sustain the petition. . . . I think the child is medically fragile and I understand father's work schedule, but the question is, do we have confidence that the child is being taken care of well, and I do not think we do at this point." The court therefore sustained the allegations of the petition, as amended, and ordered Alicia removed from father.

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<sup>4</sup> The CSW said it could not be known for certain whether Alicia had hepatitis until she was 18 months old. However, her mother tested positive for hepatitis C.

## DISCUSSION

Father contends that the juvenile court's orders sustaining the allegations of the section 342 petition and removing Alicia from father's custody were not supported by substantial evidence. For the reasons that follow, we do not agree.

### I.

#### **Substantial Evidence Supported the Juvenile Court's Jurisdictional Findings**

There is a basis for jurisdiction under section 300, subdivision (b) if the "child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . ." (§ 300, subd. (b).) We review the dependency court's jurisdictional findings for substantial evidence, and review the evidence in the light most favorable to the dependency court's findings and draw all reasonable inferences in support of those findings. (*In re Christopher M.* (2014) 228 Cal.App.4th 1310, 1318, citing *In re John M.* (2013) 217 Cal.App.4th 410, 418.) " 'It is the trial court's role to assess the credibility of the various witnesses, to weigh the evidence to resolve the conflicts in the evidence. We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence. [Citations.] Under the substantial evidence rule, we must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact.' (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.)" (*In re A.S.* (2011) 202 Cal.App.4th 237, 244.)

" '[W]hen a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged

statutory grounds for jurisdiction are supported by the evidence.’ (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)” (*In re Andy G.* (2010) 183 Cal.App.4th 1405, 1415, fn. 6.)

Substantial evidence supported the juvenile court’s finding that father failed to make an appropriate plan for Alicia’s care and supervision, as alleged in paragraph b-1 of the petition. The April 21, 2014 detention report indicated that father initially left Alicia with babysitter Wendy G., who had an open DCFS case alleging sexual abuse. When the CSW told father that Alicia could not remain in Wendy G.’s care, father left her with R.V., who had not live-scanned or received any medical training. Father did not provide R.V. with a crib, and Alicia was sleeping in the bed with R.V. It appeared that father was leaving Alicia with R.V. for extremely long periods of time: On Thursday, April 3, 2014, R.V. told the CSW that father had last visited Alicia on Monday, March 31, for about two hours. Further, father refused DCFS’s offer of childcare assistance through its family preservation program.

Substantial evidence also supported the juvenile court’s finding that father failed to provide Alicia with proper medical care, as alleged in paragraph b-2 of the petition. Alicia unquestionably was medically fragile: She was born drug exposed, at 23 weeks gestation, weighing just over a pound and a half. Alicia’s mother had hepatitis C; it was not yet known whether Alicia did as well. Because of Alicia’s premature birth, she was at increased risk for lung disease, and father therefore had been told that she would need several doses of the synagis vaccine. Notwithstanding Alicia’s fragile condition, father missed Alicia’s April 14, 2014 doctor’s visit, at which she was to receive a well-baby exam and synagis shot. Two weeks later, she was diagnosed with pertussis (whooping cough), and although father was asked to provide information about the people with whom Alicia had had contact, he failed to do so.

Finally, substantial evidence supported the juvenile court’s finding that father failed to keep DCFS apprised of his current address or to make Alicia available for unannounced home visits, as alleged in paragraph b-3 of the petition. Father apparently moved to a new residence sometime between March 7 and March 25, but he neither told the CSW he had moved nor gave her his new address. The CSW discovered father had

moved only when she attempted to make a home visit on March 25 and found the home vacant. She ultimately learned of father's new address through a family preservation caseworker. For this and other reasons—including father's unwillingness or inability to provide the CSW with Alicia's babysitter's contact information—the CSW was never able to make an unannounced home visit, despite four separate attempts to do so.

For all of these reasons, the juvenile court's jurisdictional findings were supported by substantial evidence.

## **II.**

### **Substantial Evidence Supported the Juvenile Court's Dispositional Findings**

Father also challenges the sufficiency of the evidence to support the court's dispositional order. "After the juvenile court finds a child to be within its jurisdiction, the court must conduct a dispositional hearing. [Citation.] At the dispositional hearing, the court must decide where the child will live while under the court's supervision." (*In re N.M.* (2011) 197 Cal.App.4th 159, 169.) "A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] 'The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.' [Citation.] The court may consider a parent's past conduct as well as present circumstances." (*Id.* at pp. 169-170; see also *In re Francisco D.* (2014) 230 Cal.App.4th 73, 82.)

" 'Before the court issues a removal order, it must find the child's welfare requires removal because of a substantial danger, or risk of danger, to the child's physical health if he or she is returned home, and there are no reasonable alternatives to protect the child. [Citations.] There must be clear and convincing evidence that removal is the only way to protect the child.' (*In re N.M., supra*, 197 Cal.App.4th at p. 170.)" (*In re A.S.* (2011) 202 Cal.App.4th 237, 247.) We review the juvenile court's dispositional order for substantial evidence. (*In re Francisco D., supra*, 230 Cal.App.4th at p. 80.)

Here, for all the reasons discussed in the prior section, there was substantial evidence to support the juvenile court's finding that Alicia's welfare required removal because of a substantial risk of danger to her physical health. As we have said, Alicia was a medically fragile newborn who spent the first months of her life in the NICU. Father failed to place her with appropriate caregivers, missed medical appointments, and failed to make her available to DCFS for unscheduled home visits. Accordingly, she could not be adequately protected in father's care.

Father urges that Alicia should not have been removed because there were reasonable means to protect Alicia while in his custody. Substantial evidence supported the juvenile court's contrary finding. Indeed, the record was replete with evidence that father was unwilling to work with DCFS to ensure his daughter's safety: He did not advise DCFS when he moved, refused all family preservation services, refused to allow caregivers to receive medical training from a pediatrician, failed to make Alicia available for home visits, stopped attending parenting classes once Alicia was returned to him, delayed giving DCFS contact information for Alicia's babysitters, and threatened to sue DCFS when a CSW suggested his daughter had hepatitis.

For all of these reasons, substantial evidence supported the juvenile court's findings that Alicia could not safely be placed in father's care.

## **DISPOSITION**

The jurisdictional and dispositional findings and orders are affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

EDMON, P. J.

We concur:

KITCHING, J.

EGERTON, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.